IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2493 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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SHARADKUMAR BALCHAND SHAH & 1 - Appellant(s)
Versus
MANAJI ATAJI THAKOR & 4 - Defendant(s)

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Appearance :
MR.HIREN M MODI for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 2, 4,
MR HEMANT S SHAH for Defendant(s) : 3,
MS HINA DESAI for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 29/11/2007

ORAL JUDGMENT

1. By this appeal under section 173 of the Motor Vehicles Act, 1988, original claimants, parents of the deceased son, aged 16, have prayed for enhancement of compensation and, for that

purpose, challenged the award dated 21.6.2005 of Motor Accident Claims Tribunal, Godhra, *inter alia*, in Motor Accident Claims Petition No.273 of 1993. Since learned counsel Mr.Hemant S. Shah and Ms.Hina Desai, learned advocates for the insurance companies joined as respondents No.3 and 5, have already appeared and no relief is claimed against any other respondents and learned counsel have agreed and jointly requested for final hearing and disposal of the appeal, it was heard for final disposal today at the admission stage.

2. The dispute and the main contention in this appeal are restricted to quantum of compensation as the appellants were awarded total compensation of Rs.1,36,000/- with simple interest @ 7.5% per annum against their claim of Rs.2,00,000/- with cost and interest. It was jointly submitted, on the basis of recent Division Bench judgments of this Court in ***New India Assurance Co. Ltd. v. Govind Jivraj Maheshwari (First Appeal No.1946 of 2001), Kalubhai Ditiyabhai Garvala v. Pranavbhai Bhadreshbhai Kagalvala (First Appeal No.4677 of 2006) and Chhaganbhai Somabhai Thakore v. Miteshbhai Mohanbhai Mistry (First Appeal No.1820 of 2006),*** that in similar cases of fatal accidents in which young persons had died and

prospective income could not be calculated with certainty, structured formula under section 163-A of the Motor Vehicles Act, 1988 was adopted for guidance and amounts of Rs.1,50,000/- to Rs.1,60,000/- were awarded with interest @ 9% p.a.

3. Therefore, following the recent judgments relied upon by learned counsel on both sides, appeal is required to be partly allowed so as to increase the amount of total compensation to Rs.1,55,000/-. Accordingly, respondents No.1, 2 and 3 are held to be liable to pay to the appellants additional amount of Rs.19,000/- with cost quantified at Rs.1,000/- and interest @ 9% p.a. from the date of application till realization. The additional amount shall be paid by respondent No.3 to the appellants directly by crossed account payee cheque of equal amounts in the name of each of the appellants which may be accepted by the appellants after furnishing proper proof of identification before the insurance company. Appeal accordingly stands partly allowed with costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)